TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #00-267

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On June 6, 2001, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of amendments to 326 IAC 2 and related articles. Comments were made by the following parties:

Eli Lilly and Company	(Lilly)
Barnes & Thornburg	(BT)

Following is a summary of the comments received and IDEM's responses thereto.

Comment: The Indiana Electric Utilities want more time to review the changes to the rule and an opportunity to meet with IDEM prior to preliminary adoption of this rule. (BT)

Response: There was a 30 day public notice period published in the April 1, 2001 Indiana Register. In addition to the publication of the Second Notice of Comment Period, IDEM sent copies of the Second Notice to those individuals that submitted comments to U.S. EPA concerning deficiencies in the Indiana Title V permitting process. IDEM believes it is important to keep the rulemaking process moving forward, but has and will continue to meet with members of the regulated community, at their request, to discuss the draft changes.

Comment: Why doesn't an insignificant activity or trivial activity need a modification when the applicable requirement is already in the permit and the modification is not subject to Title I of the CAA? The revisions on this topic are not clear. (BT)

Response: IDEM does not want to put an unnecessary burden on the regulated community or create a permitting backlog for the agency by requiring modifications for each and every insignificant or trivial activity. IDEM has worked with U.S. EPA to streamline requirements to ease the permitting burden. Part 70 regulates applicable requirements, not specific emission units, therefore if the applicable requirement is contained in the permit, then the addition of an insignificant or trivial activity would not need to go through permit modification procedures. The exception to this is if the addition of the unit would be considered a modification under any provision of Title I of the CAA. In this case, federal law requires a significant permit modification.

Comment: How do the streamlined requirements affect monitoring? (BT)

Response: If the unit is subject to multiple requirements that have been streamlined using the provisions in 326 IAC 2-7-24, the source will need to certify compliance with each of the applicable requirements contained in the streamlined condition in the annual compliance certification.

Comment: How will deleting the start up, shut down, and emergency provision from 326 IAC 2-7-5 affect these same provisions in other rules? (BT)

Response: IDEM is complying with the state implementation plan (SIP) and CAA in not allowing 326 IAC 2-7-5(1)(F) to create new limits through a Title V permit. IDEM has discussed this with U.S. EPA and has agreed to make this change. This change is intended for the Title V program only at this time; all other programs will be evaluated in a future rulemaking.

The air pollution control board adopted a rule addressing alternative opacity limits during start up and shut down. That rule is currently pending as a SIP revision. When U.S. EPA approves that rule, Title V permits will be able to incorporate those provisions.

Comment: How will the Title I condition language in 326 IAC 2-1.1-9.5 affect old construction permits? (Lilly)

Response: IDEM is working with the U.S. EPA to ensure that this provision will allow the supersession of old construction permits as long as the Title I conditions continue through new permits. IDEM will clarify any historical limitations prior to final adoption of this rule.

Comment: The term "federally enforceable" should be removed throughout Article 2. (Lilly)

Response: IDEM will continue to review the concept of "federally enforceable" in all parts of 326 IAC 2 and consider the removal of the term where appropriate.

Comment: The potential to emit (PTE) thresholds in 326 IAC 2-1.1-3 (exemptions) and 326 IAC 2-7-1(21) (insignificant activities) should be the same so that it would be clear if something is exempt from preconstruction approval it is also exempt from permit modification. (Lilly)

Response: The exemption levels listed in 326 IAC 2-1.1-3 are an element of Indiana's State Implementation Plan for minor new source review (NSR SIP). In the context of the comment, the NSR SIP establishes thresholds that determine whether approval from IDEM is required prior to beginning construction of a new emissions unit or modification of an existing unit. The ability to review a change prior to construction ensures that the design will protect air quality.

The thresholds established in 326 IAC 2-7-1(21) are an element of Indiana's Title V Operating Permit Program and are lower than the thresholds in the NSR SIP. Again, in the context of the comment, these thresholds determine whether IDEM approval is required prior to operating a new emissions unit. One of the purposes of the Title V Operating Permit program is to ensure that the public has some ability to review or be notified of changes at permitted sources. In general, changes that are exempt under the NSR SIP, but above the thresholds established by Title V may be operated

as minor modifications after submitting a complete application. The permit is modified and the public notified after the receipt of the application. Changes that are subject to the NSR SIP are generally subject to the same level of review under the Title V program to the extent that the separate federal requirements can accommodate that.

IDEM believes that the separate thresholds serve their respective purposes: balancing the protection of air quality, the public interest, and operational flexibility at the permitted source.

Comment: If the health-based defense is deleted, most emergencies will not be covered. This defeats the purpose of the emergency provisions. (BT)

Comment: The emergency defense or health-based limitations should not be removed from the emergency provisions. In the past the malfunction rule accounted for such emergencies. It was acceptable for 326 IAC 2-7-18 to supersede the malfunction rule when it was a duplicate rule. If the health-based provisions are removed for the emergency defense, then Eli Lilly requests that the malfunction rule be applicable instead. (Lilly)

Response: Part 70 only allows an emergency defense for technology based limitations. The U.S. EPA will not allow the defense for health-based limitations. Health-based standards are based on the assessment of public health risks associated with certain levels of pollution in the ambient environment and are created for the purpose of maintaining the National Ambient Air Quality Standards (NAAQS). U.S. EPA and IDEM agree to use the enforcement discretion approach for sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of the source. However, U.S. EPA feels that case law and Agency policy have consistently recognized that affirmative defenses should not be available for health-based standards. To allow such defense for health-based standards for periods of excess emissions can pose a threat to the NAAQS or otherwise create a risk to public health and could make Indiana's program subject to federal disapproval.